

Testimony 3-16-21 on HB 149- FOR THE BILL

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Good Morning, Chairman Frank and Vice Chair Hinojosa and the members of the Texas House Human Services Committee:

I am the new President of PART (recently renamed "Parents and Allies for Remarkable Texans"). At every annual Individual Service Plan meeting, almost across the board, guardians are informed that their loved can live in the community. We take issue with that assertion, as we know the intense support needs our family member requires and that they receive at Texas State Supported Living Centers. This yearly assertion over the past eight years, has led me to research Home and Community Service Providers.

States and the Federal government's regulatory agencies are fully aware of the hidden issues of abuse, neglect and exploitation of the vulnerable individuals who live in Home and Community Based Services (HCBS) or as it is called here in Texas -HCS. However, the public only hears of these cases through media reports or families having to bring their grief public over their loved one's injuries or death to shine a light on this hidden abuse.

In the fall of 2019, The Centers for Medicare & Medicaid Services (CMS) published a Request for Information (RFI) on a Recommended Measure Set for Medicaid-Funded HCBS. -1 In my remarks to CMS, I stated that safety and security should be one of the first outcome measures that is consistently assessed and monitored. Mandatory measures for oversight are needed for abuse, neglect and exploitation (ANE) reporting and prevention. This oversight must be one of the first quality measures the state of Texas should be developing regarding Medicaid Funded Home and Community Based Services (HCS).

In January 2018, The Federal Department of Health and Human Services (DHHS), Office of Inspector General (OIG) reviewed incident management practices from 2012-2015 and found that nationally, incident reports associated with ED (Emergency Department) use are not being reported by HCBS providers.

CMS and the OIG reviewed Medicaid billing data from patients who had hospital stays and emergency room visits, it was determined that thousands of ER visits and hospital stays were not appropriately reported to the state. The OIG report found in two independent state audits that more than 30,000 Medicare claims explicitly indicated potential abuse or neglect and almost 30 percent of those incidents had not been

reported to law enforcement. The OIG found extensive failures to properly handle critical incidents, including suspected abuse and neglect, of group home residents. -2

Recommendations that would begin to provide needed oversight.

My recommendations to this proposed Texas HHS Study would be to base them on the protections enacted from New Jersey's Stephen Komninos' Law (2017). This law strengthens protections for participants of any Department of Human Services (DHS) programs for adults with developmental disabilities, including State developmental centers and community programs.

1. Two Unannounced HHS Site Visits

In addition to scheduled Regulatory Services Facility Survey visits, HHS should make two **unannounced** site visits annually by a regulatory agency representative to evaluate if individuals are at risk of, or being subjected to abuse, neglect or exploitation (ANE) by a caregiver.

2. Two-hour Guardian notification of critical incidents

Service providers should be required to notify within two hours, all major, moderate and minor physical injury related to incidents or allegations of ANE, or any moderate or major injury regardless of the cause to an individual's guardian or Legally Authorized Representative (LAR).

3. Enact criminal penalties and a monetary fine for failing to report ANE

Enact criminal penalties and a monetary fine for failing to report ANE for a person employed or volunteering at any HHS funded programming. Failure to report suspected or actual knowledge of ANE, should result in a fine \$350 for each day that the ANE was not reported and possible criminal charges if the ANE results in serious injury or death.

4. Mandatory Drug Testing

Drug testing should be a requirement of direct care applicants and employees of ANY HHS-funded, licensed or regulated program for adults with developmental disabilities. This includes drug testing as a condition of employment, random testing while employed and drug testing for cause based on a concern or suspicion. -3

5. Right to Organize Family Councils

HCS providers should encourage and allow a family council. This right is protected specifically under the 1987 Nursing Home Reform Act. Expanding this law to all federally funded facilities, agencies and programs would guarantee the families of individuals in all settings a number of important rights to enhance their loved one's experience and improve services and conditions. -5

6. HHS create an online portal for families to review reports of Abuse, Neglect or Exploitation (ANE) Incidents

My last recommendation would be for Texas to provide an online portal for HCBS similar to the one provided for Nursing Homes by CMS. -6 The portal would provide public information on number of instances of ANE investigations in group homes. The report would indicate the number of substantiated and unsubstantiated cases as they do with Texas State Supported Living Centers. -7 This HCS portal would help families to determine the quality of care their loved ones may receive before they are placed with a provider.

Conclusion

I have provided the Committee via email a pdf with just some examples of abuse of vulnerable individuals in Texas group homes. Families hear these news stories regarding instances of abuse, neglect and exploitation and they frighten families into not allowing their loved one to find residential placement in early or middle adulthood. This delay almost guarantees that a crisis will develop when the caregiver can no longer safely care for the individual at home. Then any placement will have to be accepted without the time necessary to investigate the provider adequately.

Without transparency regarding Abuse, Neglect and Exploitation in HCBS settings, families are rolling the dice or crossing their fingers hoping for a safe outcome for their loved one.

I am asking the Committee to vote yes to approve the bill. Thank you for this opportunity to provide testimony on HB 149.

Other roles:

Rebecca Japko, Sister and Legal Guardian for Linda Jimenez, age 52, Brenham SSLC Vice-President, Brenham State Supported Living Center Family Association
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Sources

- 1- [CMS RFI-initiatives/measuring-and-improving-quality-HCBS](#)
- 2- [Joint Report: Ensuring Beneficiary Health and Safety in Group Homes](#)
- 3- <https://www.state.nj.us/humanservices/documents/05-01-18%20SKL%20fact%20%20sheet.pdf>
- 4- <https://legiscan.com/NJ/text/A4013/id/2181734>
- 5- **42 CFR sec.483.15(c); Public Law 100-203, Social Security Act**
- 6- <https://www.medicare.gov/nursinghomecompare/search.html?>
- 7- <https://oig.hhsc.texas.gov/sites/default/files/documents/reports/Annual-SSLC-Report-FY-2018.pdf>